

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MEGAN M. HOWARD and CHRISTOPHER
S. HOWARD, individually and on behalf of
their marital community,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Case No. 05-5768 RJB

ORDER GRANTING PLAINTIFFS'
MOTION FOR LEAVE TO TAKE
ADDITIONAL DEPOSITIONS

This matter comes before the court on Plaintiffs' Motion for Leave to Take Additional Depositions (Dkt. 34-1). The court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

I. BACKGROUND AND DISCUSSION

The complaint alleges that plaintiff Megan Howard suffered permanent injuries as a result of a surgical operation at the Bremerton Naval Hospital. Dkt. 1 at 6-7. The plaintiffs bring suit against the United States in federal court pursuant to the Federal Torts Claims Act, 28 U.S.C. §1346(b) *et seq.*

On September 21, 2006, the plaintiffs filed a motion seeking leave to take depositions in excess of the ten provided for in the Federal Rule 30(a)(2)(A). Dkt. 34-1 at 1. Specifically, the plaintiffs seek to take five to ten additional depositions. Dkt. 35 at 4. The defendant asks the court to deny the motion as moot on the grounds that before the plaintiffs filed this motion, the defendant

1 provided written stipulation to the plaintiffs taking ten additional depositions. *See* Dkt. 36 at 22-23.

2 The plaintiffs maintain that the defendant's consent was only partial because the stipulation contained
3 various conditions. Dkt. 39 at 2.

4 Federal Rule 30 requires that parties seeking to take more than ten depositions either seek
5 leave of court or written stipulation from opposing counsel:

6 A party must obtain leave of court, which shall be granted to the extent consistent with the
7 principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if,
without the written stipulation of the parties,

8 (A) a proposed deposition would result in more than ten depositions being taken

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10 Fed. R. Civ. P. 30(a)(2)(A) (emphasis added). Here, the defendant provided written stipulation to the
11 plaintiffs taking ten additional depositions but retained the right to oppose the scheduling or noticing
12 of such depositions, to file protective orders, to request amendment of the case schedule, and any
13 other rights to which it may be entitled. Dkt. 36, Exh. 4 at 23. The plaintiffs believe this stipulation to
14 be insufficient because they have not had an opportunity to discuss the defendant's conditions. Dkt. 39
15 at 2. In the interest of efficiency and providing clarity to both parties, the motion for leave should be
16 granted without prejudice to the defendant's right to move for the type of relief enumerated in the
17 proposed stipulation. *See* Dkt. 36, Exh. 4 at 23. This order does not affect the case scheduling, and all
18 deadlines will remain in full force and effect. *See* Dkt. 11, 27.

19 The plaintiffs have previously moved for relief related to discovery in this case. *See* Dkt. 13,
20 22. In the court's order on those motions, the court "reaffirm[ed] its instructions that the parties meet
21 and confer, attempt to work out these issues in good faith, and use conference calls to chambers
22 before filing further discovery motions." Dkt. 29 at 4. Counsel for both parties are again strongly
23 encouraged to resolve these issues by agreement and stipulation to avoid unnecessary burden and
24 expense to the court and to their clients in this matter.

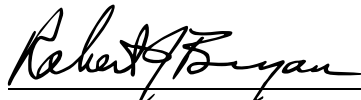
II. ORDER

Therefore, it is hereby

ORDERED that Plaintiffs' Motion for Leave to Take Additional Depositions (Dkt. 34-1) is **GRANTED**, and the plaintiffs may conduct no more than ten depositions in excess of the ten allowed under Federal Rule 30(a)(2)(A).

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 3rd day of October, 2006.


Robert J. Bryan
United States District Judge